



Human Resources Department
12425 West Bell Road
Surprise, Arizona 85374-9002
Ph 623-875-4272
Fax 623-583-3491
TTY 623-875-4208

Policy Implementing the Federal Omnibus Transportation Employee Testing Act Covering Safety Sensitive Employees

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Adoption of Policy

City of Surprise

Policy Implementing the Federal Omnibus Transportation Employee Testing Act Covering Safety Sensitive Employees

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Foreword

This policy incorporates elements from the Code of Federal Regulations (CFR), Title 49, Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Title 49, Part 382 (Federal Motor Carrier Safety Administration) - Controlled Substances and Alcohol Use and Testing, Title 49 Part 655 (Federal Transit Authority) - Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, and City of Surprise policy.

Both the Federal Motor Carrier Safety Administration and the Federal Transit Authority require employers to meet their regulations while allowing employers to establish policies that exceed the regulations.

The base policy addresses Federal Transit Authority requirements with items specific to the Federal Motor Carrier Safety Administration noted in the text.
Underlined text distinguishes City of Surprise policy.

Where this policy makes specific reference to Federal Transit Authority regulations it is understood that the City of Surprise requires all FTA and FMCSA covered employees to adhere to these regulations.

In the event that a specific situation is not covered in this policy, the City of Surprise will follow Title 49, Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Title 49, Part 382 (Federal Motor Carrier Safety Administration) - Controlled Substances and Alcohol Use and Testing, Title 49 Part 655 (Federal Transit Authority), judicial interpretations of those regulations, and legal interpretations.

Purpose

The Federal Transit Administration (FTA) recognizes that prohibited drug use and alcohol misuse affects everyone in the United States in one way or another. In response to passage of the Omnibus Transportation Employee Testing Act of 1991, the FTA has published regulations prohibiting drug use and alcohol misuse by safety sensitive employees and requires agencies to test for prohibited drug use and alcohol misuse.

The Federal Motor Carrier Safety Administration has also published regulations prohibiting drug use and alcohol misuse by safety sensitive employees in non-transit positions and requires agencies to test for prohibited drug use and alcohol misuse.

The City of Surprise recognizes that employees are an organization's most important resource and is therefore committed to providing an environment that is totally free of the harmful effects of drugs and alcohol. The following policy is intended to protect the safety of employees and the public we serve, as well as prevent accidents and injuries that are the result of drug and/or alcohol abuse.

Scope

For the employees covered by the foregoing federal regulations, this policy supersedes Section 305, Drug Free Workplace of the Employee Policies and Guidelines for the City of Surprise.

Policy Communication

The City's philosophy on substance abuse is to emphasize a zero-tolerance policy and to promote self-identification, and training.

Realizing that a policy's effectiveness is dependent upon how well it's communicated; it is the City's intent to furnish a copy of this policy to every employee regulated by Title 49.

Each employee regulated by Title 49 will be required to sign a confirmation of receipt form that acknowledges that the employee received a copy of this policy.

It is the responsibility of the employee to read, understand, and comply with this policy. Employees are encouraged to ask questions if there is any part of this policy that is not understood. Failure to read or understand any part of the policy will not relieve the employee of the responsibility to abide by it.

Contact Person(s)

The Human Resources Department is responsible for administering this policy and any questions or concerns about the policy or substance abuse in general should be directed to Human Resources.

Human Resources may be reached directly at:

By phone: 623-875-4272

By fax: 623-583-3491

By TTY: 623-875-4208

At: 12425 West Bell Rd, Surprise, AZ 85374

Office hours: Monday through Friday from 8:00 am to 5:00 pm

Employee Assistance Program

The City of Surprise offers the services of the Employee Assistance Program (EAP) as a part of it's commitment to provide a drug-free workplace. The EAP can provide access to professional services in an effort to aid the employee who voluntarily admits that he or she has an alcohol or drug problem.

Self-Identification:

Employees are encouraged to self-identify to management for a chemical dependency problem (illegal controlled substances or alcohol) before it affects on-the-job performance. Discipline will not be initiated because an employee self-identifies (self-identification must occur prior to an employee receiving notification of the requirement for a test).

Employees who self-identify will:

- Be removed from any safety-sensitive positions until released by a Substance Abuse Professional (SAP).
- Agree to successfully participate in a City approved EAP/treatment rehabilitation program and comply with the program conditions.
- Sign a "Consent to Release Information" document allowing the Substance Abuse Professional (SAP) to communicate the employee's progress to the Human Resource Department or designee.
- Agree to unscheduled alcohol and/or drug tests, as directed by the SAP, for a minimum of six (6) tests in the first twelve (12) months and continued unscheduled testing for a period not to exceed sixty (60) months from the date the employee returns to work.

Employees who self-identify may:

- Use accumulated sick leave, for the rehabilitation program.
- Be accommodated by their department by being placed in a non-driving/safety-sensitive position if available and the employee possesses the minimum qualifications for the position. (Not all departments will be able to accommodate). If a person is placed in a non-driving safety-sensitive position, that person will not be classified as having been "demoted" or "transferred" under the Personnel Policies and Procedures for the City of Surprise. If there is a difference in pay, the employee's rate of pay shall be fixed by the City Manager. An employee shall have a right of appeal to the

City Manager, but will not have the right to appeal the placement to an arbitrator. The City Manager's decision regarding pay will not be subject to appeal.

Voluntary self-identification shall not relieve the employee from the responsibility of adequate job performance, nor prevent disciplinary action (up to and including dismissal) in the event that the employee tests positive for any illegal controlled substance or alcohol after follow-up testing has begun.

Self-Referral:

It is the policy of the City of Surprise to work with employees who are willing to participate in a rehabilitation/treatment program. Employees are encouraged to voluntarily utilize the services of the City's EAP program at 602-274-1401.

Counseling or other information may be obtained by calling either number during normal business hours. Crisis calls can be made 24 hours a day, 365 days per year by calling **1-800-327-2384**. Crisis appointments generally can be made within 24 hours

EAP Select services are free to City employees and members of their immediate household. If an employee is referred to other medical, rehabilitation services, there may be a cost for those services. Those employees covered under the City's health benefit plan will need to refer to their Medical Benefits booklet to determine if deductible or co-payments are required. Employees who self-refer may use sick leave for "in-patient" or "out-patient" rehabilitation programs.

Management Referral:

If the employee is enrolled in an "in-patient" rehabilitation program, the department shall authorize the use of any accumulated sick leave, vacation, compensatory time, and personal leave. If the rehabilitation is "out-patient," the employee may use accumulated vacation, compensatory time, and personal leave. If these leaves are insufficient, the employee will be on unpaid leave.

Employees covered under the City's health benefit plan will need to refer to their Medical Benefits booklet to determine if deductible or co-payments are required.

Refusal to participate or failure to successfully comply with a counseling program or treatment program to which an employee is referred will result in the employee being immediately terminated.

Failure to successfully comply with a counseling program and/or treatment program may involve any of the following examples, which are not intended to be all-inclusive:

- Checking one's self out of the program.
- Being dismissed from the program for non-participation.
- Non-compliance in fulfilling the program/plan as designed by the program staff/counselors.
- Non-compliance in attending the required aftercare meetings.
- A positive, adulterated, or substituted drug and/or alcohol test.

Upon release by the Substance Abuse Professional (SAP) and a negative return-to-duty alcohol/drug test, any subsequent positive alcohol or drug test (whether administered by the counseling/treatment program or a follow-up test scheduled in accordance with the Substance Abuse Professional's evaluation) will result in the employee being immediately terminated.

Who Is Subject To This Policy

Participation in, and compliance with this policy is mandatory for employees covered by Title 49, and is a condition of employment.

FTA Covered Employees

Employees who perform safety-sensitive functions are subject to drug and alcohol testing, as described in this policy. The FTA has determined that safety sensitive functions include those who:

- Operate revenue service vehicles that are in or out of service;
- Dispatch or control revenue service vehicles;
- Maintain revenue service vehicles or other equipment used in revenue service;
- Provide security and carry a firearm;

The actual job duties of employees have been analyzed to determine whether persons perform, or may be called upon to perform, safety-sensitive duties covered by the FTA. These positions include but are not limited to:

- Dial-a-Ride Drivers and backup drivers;
- Dial-a-Ride Dispatchers and backup dispatchers;
- Supervisors of FTA covered employees;
- Mechanics performing any work on transit vehicles if they are not otherwise included in the FMCSR testing requirements.

Also included are volunteers who perform FTA covered safety-sensitive jobs. (A volunteer is only subject to 49 CFR Part 655 if they receive "remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity" or "hold a Commercial Driver's License to operate a transit vehicle.")

Compliance with the City of Surprise Policy Implementing the Federal Omnibus Transportation Employee Testing Act Covering Safety Sensitive Employees is a requirement of each of these safety-sensitive employees and is a condition of employment and continued employment with the City of Surprise.

FTA covered employees are subject to testing anytime they are performing a safety-sensitive function which includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

FMCSA Covered Employees (Non-FTA)

Employees who perform safety-sensitive functions are subject to drug and alcohol testing, as described in this policy. The FMCSA has determined that safety sensitive functions include those who:

- Are subject to the commercial driver's license requirements of 49 CFR, Part 383.

The actual job duties of employees have been analyzed to determine whether persons perform, or may be called upon to perform, safety-sensitive duties covered by the FMCSA. These positions include but are not limited to:

- Sanitation Drivers
- Service Workers
- Equipment Operators
- Senior Maintenance technicians
- Wastewater Operators
- Senior Wastewater Operators
- Senior Mechanics
- Other positions named as requiring a CDL

Compliance with the City of Surprise Policy Implementing the Federal Omnibus Transportation Employee Testing Act Covering Safety Sensitive Employees is a requirement of each of these safety-sensitive employees and is a condition of employment and continued employment with the City of Surprise.

FMCSA covered employees are subject to testing anytime they are performing a safety-sensitive function which includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Prohibited Conduct

No Covered Employee Shall:

- Consume alcohol four hours prior to performing a safety-sensitive function.
- Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 percent or greater. This includes when the employee is called out for duty.
- Use alcohol while performing safety-sensitive functions.
- Manufacture, use, sell, distribute, dispense, purchase, or have in possession alcohol or any illegal controlled substance on City time or on City property, including breaks and/or lunch breaks.
- Consume alcohol or use illegal controlled substances while on-call or standby.
- Fail to remain readily available for testing after an accident.
- When required to take a post accident test, use alcohol for eight hours following the accident or before being tested, whichever comes first.
- Fail to immediately report to the collection site when notified to do so.
- Report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any illegal controlled substance, except when the substance is obtained legally under the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee's ability to perform safety-sensitive functions. Any employee using medication or prescribed drugs, which may impact their ability to perform safety-sensitive functions, shall notify their supervisor of the fact **IN WRITING** prior to performing any safety-sensitive functions.
- Report for duty, remain on duty or perform a safety-sensitive function, if the employee tests positive for illegal controlled substances.
- Attempt to interfere, alter, substitute, adulterate, or in any way affect the outcome of the alcohol or drug testing procedure.
- Test positive for alcohol or drugs after being released by the Substance Abuse Professional (SAP) and returned to duty; either during the rehabilitation program (tests administered by the rehab facility) or during follow-up tests scheduled in accordance with the Substance Abuse Professional's evaluation, or during random tests.

- Test positive for the following drugs in accordance with Title 49, Part 40, Alcohol & Drug Testing Procedures:
 - Marijuana (THC metabolite)
 - Cocaine
 - Amphetamines (e.g., racemic amphetamine, dextroamphetamine, and methamphetamine)
 - Opiates (e.g., heroin, morphine, codeine)
 - Phencyclidine (PCP)

If a different substance is suspected than the standard five tested for, the Human Resource Department, or designee may request additional or different substance testing. The employee will be tested using a non-regulated custody and control form.

No Supervisor of a Covered Employee Shall:

Having actual knowledge or reasonable suspicion that a covered employee has an alcohol concentration of 0.02 percent or greater, permit the employee to continue performing safety-sensitive functions.

Having actual knowledge or reasonable suspicion that a covered employee is using alcohol while performing safety-sensitive functions, permit the employee to perform or continue to perform these functions.

Having actual knowledge or reasonable suspicion that a covered employee has used an illegal controlled substance, permit the employee to perform or continue to perform a safety-sensitive function.

Permit a covered employee who refuses to submit to post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug testing, to perform or continue to perform safety-sensitive functions.

Having actual knowledge or reasonable suspicion that a covered employee has tested positive for illegal controlled substances, permit the employee to perform or continue to perform safety-sensitive functions.

A Supervisor Shall:

Having actual knowledge or reasonable suspicion of any of the situations listed above, shall report such information to management immediately.

Refusal to Take Alcohol Test:

Under Section 40.261(a)(2) a covered employee is considered to have refused an alcohol test if they:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with this policy or applicable FTA regulations, after being directed to do so by the employer;
2. Fail to remain at the testing site until the testing process is complete. If an applicant leaves the testing site before the testing process commences (see Sec. 40.243(a)) for a pre-employment test, he/she is not deemed to have refused to test;
3. Fail to provide an adequate amount of saliva or breath for any alcohol test required by this policy or FTA regulations. If an applicant does not provide an adequate amount of breath or saliva because he/she has left the testing site before the testing process commences (see Sec. 40.243(a)) for a pre-employment test, he/she is not deemed to have refused to test;
4. Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see Sec. 40.265(c));
5. Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at Sec. 40.265(c);
6. Fail to sign the certification at Step 2 of the Alcohol Testing Form (see Secs. 40.241(g) and 40.251(d)); or
7. Fail to cooperate with any part of the testing process.

"If a covered employee refuses to take an alcohol test, they will cease performing a safety sensitive function, will receive disciplinary action up to and including termination and be referred to a SAP."

Alcohol testing shall be performed utilizing a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT), operated by a trained and certified breath alcohol technician (BAT). Collection procedures are outlined in this policy.

Refusal to Take a Drug Test:

Under Section 40.191(a)(2) a covered employee is considered to have refused to take a drug test if they:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable FTA regulations, after being directed to do so;
2. Fail to remain at the testing site until the testing process is complete. If an applicant leaves the testing site before the testing process commences (see

Sec. 40.63 (c)) for a pre-employment test, he/she will not be deemed to have refused to test;

3. Fail to provide a urine specimen for any drug test required by this policy or FTA regulations. If an applicant does not provide a urine specimen because he/she has left the testing site before the testing process commences (see Sec. 40.63 (c)) for a pre-employment test, he/she will not be deemed to have refused to test.];
4. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see Secs. 40.67(l) and 40.69(g));
5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see Sec. 40.193(d)(2));
6. Fail or decline to take a second test the employer or collector has directed you to take;
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) under Sec. 40.193(d). In the case of a pre-employment drug test, an applicant is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment; or
8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).

If the MRO reports that a covered employee has a verified adulterated or substituted test result, it is considered refusal to take a drug test.

If a covered employee refuses to take a drug test, they will cease performing a safety sensitive function, will receive disciplinary action up to and including termination and be referred to a SAP.

Drug testing shall be conducted by urinalysis in a manner so as to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (HHS). All testing shall be conducted consistent with the procedures set forth in 49 CFR, Part 40. Collection procedures are outlined in this policy.

Consequences of Prohibited Conduct:

Covered employees who have engaged in prohibited conduct (as stated in Prohibited Conduct) shall be immediately removed from their safety-sensitive/driving position, and placed on unpaid administrative leave pending an administrative investigation and disposition of their employment status. The employee will provide a phone number that they can be reached so that they can be contacted by phone. The employee is to remain available for contact and to be

ready to present himself or herself at a designated City location when asked to do so by supervision or management. If necessary, the employee's work hours may be changed (i.e., 8:00 a.m. – 5:00 p.m.) for administrative convenience.

A Covered Employee who:

Consumes alcohol four hours prior to performing a safety-sensitive function will be subject to disciplinary action up to and including dismissal.

Manufactures, uses, sells, purchases, or is in possession of alcohol or any illegal controlled substance on City time and/or on City property, or during breaks and/or lunch breaks, will be terminated.

Reports for duty, or reports for duty after being called out, or remains on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater will be terminated.

Consumes alcohol while on standby will be subject to disciplinary action up to and including dismissal.

Consumes alcohol while on-call will be subject to disciplinary action up to and including dismissal.

Consumes alcohol while on-call and does not notify management of alcohol consumption when contacted by management for call-out and reports for duty, will be subject to disciplinary action up to and including dismissal. In addition, the employee will be required to submit to an alcohol test if the covered employee acknowledged the use of alcohol, but claims the ability to perform his or her safety-sensitive function.

Consumes alcohol off-duty, is called out for work, and does not immediately notify management of the alcohol consumption when contacted by management for call-out, and reports to work will be subject to disciplinary action up to and including dismissal.

Reports for duty or remains on duty requiring the performance of safety-sensitive functions when the employee uses any illegal controlled substance, except when the substance is obtained legally under the instructions of a licensed medical practitioner, will be terminated.

Fails to report to supervision the use of prescribed medication that may adversely affect their ability to perform safety-sensitive functions, will be subject to disciplinary action up to and including dismissal.

Fails to report to the designated testing facility immediately upon notification to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test, will be considered a positive test result and subject to disciplinary action up to and including dismissal.

Fails to remain readily available for testing after an accident, is deemed to have refused to submit to testing and will be subject to disciplinary action up to and including dismissal.

After an accident, fails to request or consent to alcohol and/or drug testing at a hospital or urgent care facility, including a blood test, will be deemed to have refused to submit to testing. A refusal to test shall be considered a positive test result and will result in termination.

Refuses to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow up alcohol and/or drug test, will be removed from their safety-sensitive position, considered to have had a positive test result, and subject to disciplinary action up to and including dismissal.

Attempts to interfere, alter, substitute, adulterate, contaminate, or in any way affect the outcome of the alcohol or drug test procedure will be terminated from City employment. This includes verified adulterated or substituted test results.

Tests positive for any of the drugs in the drug panel: Marijuana, Cocaine, Amphetamines, Opiates (including Heroin) and Phencyclidine (PCP), will be subject to disciplinary action, up to and including dismissal.

Tests positive for any other drugs tested for in cases where uses of a specific drug or drugs is suspected, will be subject to disciplinary action, up to and including dismissal.

Tests positive for alcohol and/or drugs while in their original probationary employment period will be terminated. The employee will be informed in writing of the availability of the services of Substance Abuse Professionals (SAP). The City will not be responsible for paying for any services received by a discharged employee.

Uses illegal drugs or tests at 0.02 percent or greater for alcohol, **may**, upon confirmation of a positive test result, be offered rehabilitation. The City is not, however, required to offer rehabilitation to an employee. If the employee is offered and accepts rehabilitation, the employee must sign a "Last Chance Agreement", be referred to and evaluated by a Substance Abuse Professional (SAP), successfully complete the rehabilitation program, and remain alcohol and drug free in order to remain employed by the City of Surprise. If an employee refuses to sign a "Last Chance Agreement," and/or does not successfully complete the rehabilitation program, and/or does not remain alcohol and drug free, the employee will be terminated immediately.

Who tests positive and signs a "Last Chance Agreement," will be served with a mandatory eighty- (80) hour suspension without pay, and will be referred to meet with the City's designated Substance Abuse Professional (SAP) for evaluation.

Has been referred for substance rehabilitation will be required to adhere to the requirements of the rehabilitation program and the Last Chance Agreement. Failure to comply will result in immediate termination of employment.

Who tests positive for alcohol and/or drugs after being released by the Substance Abuse Professional (SAP) and returned to duty; either during the rehabilitation program (tests administered by the rehab facility) or follow-up tests scheduled in accordance with the SAP evaluation, will be terminated.

Tests positive for alcohol and/or drugs will be removed from all eligibility lists for positions subject to CDL requirements and/or driving positions for a period of two (2) years.

A Supervisor Who:

Has actual knowledge or reasonable suspicion that a covered employee has an alcohol concentration of 0.02 percent or greater and permits the employee to continue performing safety-sensitive functions, will be subject to disciplinary action up to and including dismissal.

Has actual knowledge or reasonable suspicion that a covered employee is using alcohol while performing safety-sensitive functions and permits the employee to perform or continue to perform these functions, will be subject to disciplinary action up to and including dismissal.

Permits a covered employee who refuses to submit to post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug testing, to perform or continue to perform safety-sensitive functions, will be subject to disciplinary action up to and including dismissal.

Has actual knowledge or reasonable suspicion that a covered employee has used a controlled substance and permits the employee to perform or continue to perform a safety-sensitive function, will be subject to disciplinary action up to and including dismissal.

Has actual knowledge or reasonable suspicion that a covered employee has tested positive for illegal controlled substances, permit the employee to perform or continue to perform safety-sensitive functions, will be subject to disciplinary action up to and including dismissal.

Has actual knowledge or reasonable suspicion of any of the situations listed above and does not report such information to management immediately, will be subject to disciplinary action up to and including dismissal.

Types of Tests

Section 655.49(a) states: "Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under Section 655.44, a random drug and alcohol test required under Section 655.45, a reasonable suspicion drug and alcohol test required under Section 655.43, or a follow-up drug and alcohol test required under Section 655.47. No employer shall permit an employee who refuses to submit to such a test perform safety-sensitive functions".

List of Tests Required:

The following types of tests will be performed:

Drugs

Pre-Employment
Post-Accident
Reasonable Cause
Random
Follow-Up
Return to Duty

Alcohol

Post-Accident
Reasonable Cause
Random
Follow-Up
Return to Duty

Pre-Employment Drug Testing

Pre-Employment Drug Testing, External Applicants:

Pre-Employment Drug Testing is applicable when an external applicant applies for a regular or temporary position with the City of Surprise, and is subject to this policy. After a conditional offer is made and written consent is granted, the applicant will be tested for controlled substances. Applicants will not be allowed to substitute testing done through their own medical facilities and/or laboratories. The City of Surprise cannot hire an applicant to perform a safety-sensitive function unless the applicant has taken a drug test with a verified negative result that has been submitted to under this program. The applicant cannot start work, which includes performing any safety-sensitive functions, until a verified negative drug test result has been received by the City. The applicant must begin work within 30 days of the drug test. If an applicant is not able to begin work within 30 days of the test, he/she must be re-tested with a verified negative result before actual start date. If the test is cancelled, the employee must retake and pass the drug test before being hired.

Failure to appear for the test, refusal (as outlined in this policy) or positive test results will permanently disqualify the applicant from employment.

Pre-Employment Drug Testing, Internal Applicants:

Pre-Employment Drug Testing is applicable when an internal applicant applies for a regular or temporary position with the City of Surprise, and is subject to this policy. After a conditional offer is made, the applicant will be tested for controlled substances. Internal applicants will not be allowed to substitute testing done through their own medical facilities and/or laboratories. The City of Surprise cannot hire an internal applicant to perform a safety-sensitive function unless the internal applicant has taken a drug test with a verified negative result that has been submitted to under this program. The internal applicant cannot start work in the new position if it requires performing any safety-sensitive functions, until a verified negative drug test result has been received by the City. The internal applicant must begin work within 30 days of the drug test. If an internal applicant is not able to begin work within 30 days of the test, he/she must be re-tested with a verified negative result before actual start date. If the test is cancelled, the employee must retake and pass the drug test before being transferred or promoted.

When an employee returns to work after a leave of absence of 30 days or more and the employee has not been subjected to random controlled substances testing or has been employed by another entity, the employee will not be allowed to return to work until the City has received a negative drug test result. The department may accommodate an employee by placing them in a non-driving/safety-sensitive position if appropriate and available (not all departments will be able to accommodate). If the department is not able to accommodate, the employee will be placed on a paid administrative leave pending test results. Employees shall be removed from the random pool whenever their leave of absence is in excess of 30 days.

The Human Resources Department may not use an applicant to perform safety-sensitive driving functions if the information indicates that the applicant has tested positive for drugs, has tested at or above 0.02 percent breath alcohol concentration, or has refused to test, unless the hiring department has evidence that the applicant has been evaluated by a Substance Abuse Professional (SAP), completed required counseling, passed a return-to-duty test, and been subject to follow-up testing with negative test results.

If the pre-employment drug test is reported as a positive, the Human Resource Department will notify the employee's Supervisor for appropriate action up to and including dismissal to be taken as per this policy.

If an employee tests positive for drugs, they will be removed from all eligibility lists for positions subject to CDL requirements and/or driving positions for a period of two (2) years.

Random Alcohol and/or Drug Testing

All safety-sensitive employees are subject to unannounced random drug and alcohol testing. The testing will be spread throughout the calendar year and will be conducted on all days and hours during operating hours. The primary purpose of random testing is to deter and detect prohibited drug and alcohol use and remove identified users from the work place.

Section 655.45(e) states: "The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers."

Employees should be aware that while the company remains committed to its Employee Assistance Program (EAP) and our desire to help troubled employees, we will only do so for those employees who voluntarily come forward and seek help prior to notification of a test.

Under random testing, there are two separate types of tests:

- 1) Drug tests by urinalysis
- 2) Alcohol test by breath

Percentages for random drug and alcohol testing will comply with FTA rates as published in the Federal Register. Under the selection process used, each covered employee shall have an equal chance of being testing each time selections are made.

The software selection and random pull will be administered by a federally approved independent agent who has received special training on this equipment.

Once employee names are selected, the employee will only be notified of his/her selection on the date of the testing, after reporting for duty. Section 655.45(l) states: "A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty." Once notified, the employee must report immediately to the collection site. Any employee who refuses to submit to a random test will be suspended and will receive disciplinary action up to and including termination and referred to a SAP.

Any selected employee who is absent from duty on the dates designated for random testing will not be informed of his/her selection, and will be tested upon their return except if a new draw has been initiated.

Upon selection of an employee to be tested for drugs and/or alcohol, the Human Resource Department, or designee, will contact the employee's supervisor and notify them of the selection.

The supervisor will notify the employee that they must report immediately to the City's nearest designated facility for testing. **No advance notification will be given to the employee.** If the employee is performing a safety-sensitive function at the time of the notification, the employee will be directed to cease performing the safety-sensitive function and proceed to the City's designated facility for testing. The employee may be allowed to use a City vehicle or a supervisor will make arrangements for the employee to be taken for testing. Testing will be done on City time and at City expense.

Because the random selection software processes every employee's name in the pool each time a name is chosen, an employee's name may be picked more than once. For example, the software may generate the same employee for both drug and alcohol test, or the same person may be tested more than once during the year. It is also possible that an employee may not be selected during any given year. Testing positive for prohibited drug or alcohol use will result in disciplinary action up to and including termination and referral to a substance abuse professional.

Reasonable Suspicion/Cause Drug and Alcohol Testing

Section 655.43(b) only permits a reasonable suspicion test under FTA authority based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

When an employee, by observation or report of the employee's behavior, is suspected of being impaired or under the influence, and as a result is unable to perform the duties of their position safely, the employee will be ordered to submit to a drug and alcohol test.

When an employee (who is not a supervisor) has reasonable suspicion of another employee's illegal controlled substance and/or alcohol use in violation of this policy, the employee shall immediately notify a supervisor.

Reasonable suspicion drug or alcohol testing will be conducted as a result of the observations of one or more supervisors who have been appropriately trained in the signs and symptoms of drug and alcohol use. The supervisor must personally observe and document the behavior leading to the decision to reasonable suspicion testing.

The supervisor will then contact another supervisor to observe the behavior. If in agreement that the reasonable suspicion exists, the supervisor shall contact the

Human Resource Department or department designee to order a "For Cause" test. The Personnel Officer shall contact the Alcohol & Drug Testing Office and order the "For Cause" test prior to taking the employee to be tested. If the two supervisors disagree, a representative from the Human Resources Department will decide whether to order testing. If another supervisor is not available to confer, the supervisor shall call his/her supervisor to discuss the observation and make a decision to test.

The supervisor and any other supervisor involved will document their observations and involvement in the situation to drug and alcohol test an employee for substance use.

The supervisor(s) shall immediately remove the employee from safety sensitive duties and take the employee for testing, following City procedures as listed below:

1. The supervisor(s) must isolate and inform the employee of their observation and that they have cause to believe that the employee's behavior warrants testing. This discussion must take place in as private a setting as possible.
2. The employee should be given an opportunity to explain if there is a reason for the observed behavior. However, the employee will still be tested.
3. If the employee refuses to submit to the testing, he/she shall not be permitted to operate any City vehicle, or to continue working. A refusal shall be treated as a positive test, and the employee will be immediately suspended pending a termination hearing. The employee will be transported to their home to prevent additional safety concerns.
4. If the employee agrees to the request for testing, the supervisor will transport the employee to the testing/collection site. The supervisor will wait for the employee, but shall not go into the examination, collection, or breath testing rooms.
5. Note: Under Section 40.27: An employer must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).
6. After the collections are performed, the employee will be suspended from duty pending the results. The employee will be transported to his/her home to prevent additional safety concerns. Testing positive for prohibited drug or alcohol use will result in termination and referral to a SAP.
7. The supervisor is required to document the events that led to the testing, as well as the conversations and events that followed the request.

Post Accident Testing

Post-accident testing will comply with FTA regulations, as detailed in Part 655 of the regulations, which are available in Human Resources. Section 655.4 (Accident) defines the FTA criteria for a covered accident after which drug and alcohol testing must be conducted, as follows: "Accident means an occurrence associated with the operation of a vehicle, if as a result: (1) An individual dies, or (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident, or (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle."

The criteria for FMCSA post-accident testing varies slightly, however, all City of Surprise covered employees will be tested using FTA criteria.

Post-accident testing will include a drug and alcohol test. Alcohol testing must be conducted immediately and before drug testing and must be performed within two (2) hours after the accident. Drug testing likewise, must be conducted immediately, but after the alcohol test is performed, and must be conducted no later than thirty-two (32) hours after the accident. If this cannot be accomplished, the reasons for not testing must be thoroughly documented and attempts to alcohol test should continue for up to 8 hours following the accident. Employees who have not been immediately tested may not consume alcoholic beverages within 8 hours after the accident. If alcohol testing cannot be completed within 8 hours or drug testing within 32 hours, the reasons for not testing within these time frames must be documented by the supervisor. Documentation shall be entered on the Post-Accident Individual test Summary form.

In addition to the operator of the vehicle involved in an accident, other safety-sensitive employees whose performance could have contributed to the accidents (as determined by the company using the best information available at the time of the accident) must be tested. These employees shall also fall within the above time lines.

The following steps will be followed by the supervisor:

1. Any injuries must be treated first.
2. The employee and supervisor will cooperate with law enforcement officials.
3. Explain to the employee that a test is required to ensure that drugs or alcohol were not a contributing factor in the accident.
4. If the employee refuses to submit to the testing, he/she shall not be permitted to operate any company vehicle, or to continue working. A refusal shall be treated as a positive test, and the employee will be suspended and

will receive disciplinary action up to and including termination. The employee will be offered transportation to their home to prevent additional safety concerns.

5. If the employee agrees to the request for testing, the supervisor will transport the employee to the testing/collection site. The supervisor will wait for the employee, but shall not go into the examination, collection, or breath testing rooms.
6. Note: Under Section 40.27: An employer must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).
7. After the collections are performed, the employee will be placed on paid administrative leave pending the results if the employee shows any signs of impairment by drugs and/or alcohol. Signs of drug/alcohol impairment must be documented on the Supervisor Report. The employee will be offered transportation to his/her home to prevent additional safety concerns. Testing positive for prohibited drug or alcohol use will result in disciplinary action up to and including termination and referral to a SAP.
8. The supervisor is required to document the events that led to the testing, as well as the conversations and events that followed the request, using the Post-Accident Individual test Summary form.
9. If the accident results in the employee's death, being in an unconscious condition, or being admitted for treatment, a Human Resources Representative will work with the Coroner, hospital, or treatment center to conduct testing.

Return to Duty Testing

Before any employee is allowed to return to duty after voluntarily coming forward with a substance abuse problem, or after testing positive for alcohol at 0.02 or more (but less than 0.04), he/she must first be evaluated by a substance abuse professional (SAP) and pass a return-to-duty drug and alcohol test. The SAP will recommend when the employee is ready to return to work and will be given a return-to-duty test, and may require that it be for drugs and/or alcohol regardless of what the original positive test was for.

Prior to the return-to-duty test being performed, the employee must be evaluated by a SAP to determine whether the employee has followed the recommendations for action by the SAP, including participation in any rehabilitation program. A

Human Resources representative will follow-up with the SAP as necessary to verify counseling or treatment.

The employee must have a verified return-to-duty negative drug test result or an alcohol test result of less than 0.2 to return to his/her job. If an employee refuses to take a return-to-duty test, he/she will be subject to termination. If the return-to-duty test is positive, the employee will be terminated and referred to a SAP.

Follow Up Testing

Once allowed to return to duty, as recommended by the SAP, an employee shall be subject to unannounced follow-up drug and alcohol testing for at least 12 but no more than 60 months. The frequency and duration of the follow-up testing will be determined by the SAP. The City of Surprise requires a minimum of 24 months follow up alcohol and/or drug testing. A minimum of six tests will be performed during the first 12 months after the employee has returned to work. The City will pay for the cost of the test.

Follow-up testing is separate from and in addition to regular random testing. Employees subject to follow-up testing will also remain in the standard random pool and will be tested whenever their names come up for random testing, even if this means being tested more than once in the same week or month. Testing positive for prohibited drug and alcohol use in violation of this policy will result in disciplinary action up to and including termination and referral to a substance abuse professional.

Collection Process

Urine Specimen Collection Procedures:

An employee requested to undergo a drug test shall be required to provide a urine specimen at a designated collection site, within the time limits specified by the FTA. In order to ensure integrity of the specimen collection procedure, a standard Custody and Control Form shall be used. The employee is required to provide positive identification (acceptable photo ID) at the collection site. The employee is subject to discipline, up to and including dismissal for failure to have appropriate identification available. The control form shall be completed by both the employee and the collection site personnel. The control form then shall be completed by the person responsible for collecting the specimen and shall then be forwarded along with the specimen to the designated laboratory to conduct the actual testing process.

All urine specimens shall be collected in clean, single-use containers that remain securely wrapped until filled with the specimen. The container shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's

presence immediately prior to being provided. Forty-five milliliters of urine shall be collected. The collection site technician shall pour 30 milliliters into one bottle to be used as the primary sample, and the remainder (a minimum of 15 milliliters) shall be poured into another, clean container to be used as the split sample.

If the employee is unable to provide a minimum of 45 milliliters (approximately 1.5 oz.) of urine for a sample, the specimen shall be discarded and the collector shall instruct the employee to drink not more than 40 ounces of fluid distributed reasonably for a period of up to three (3) hours. A refusal by the employee to drink fluids will not be considered a refusal to test. The collection site staff shall contact the City of Surprise Human Resource Department or designee to inform them that the employee will be detained.

The employee will again attempt to provide a sufficient urine specimen using a fresh collection container during or at the end of the three-hour period of time.

If a sufficient urine specimen cannot be obtained after the three hours, the insufficient specimen shall be discarded and the urine collection process discontinued. The collector shall direct the employee to be evaluated by a physician at the testing facility to determine if in his/her reasonable judgment, that a medical condition has or could have precluded the employee from providing an adequate amount of urine.

If the physician in his/her reasonable judgment is unable to make the determination, the employee's failure to provide an adequate amount of urine, shall be regarded as a refusal to take a test and therefore, considered a positive result.

An employee required to provide a specimen shall be expected to complete any necessary forms required by the collection site personnel or the company. No person (i.e., supervisor, union representative, etc.), except for the employee being tested and authorized site collection personnel, shall be permitted in the testing/collection area. This is to ensure there is no opportunity for tampering and alteration. Any company personnel found to have tampered with or altered another employee's sample or hindered proper testing in any way will be subject to disciplinary action, up to and including discharge.

To the extent possible, collection site personnel shall keep the employee's specimen container within sight both before and after the employee has urinated. After the specimen is collected, both the primary and split specimens shall be properly sealed and labeled by the collector in the presence of the employee, and the employee will initial the seals to verify that it is his/her specimen. The control form shall be used for maintaining control and accountability for each specimen from the point of collection until final disposition. The date and purpose shall be documented on an approved chain of custody form for each time a specimen is handled or transferred, and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling a specimen.

Both the primary and split specimens shall be placed in securely sealed containers and sent to the laboratory for actual testing. The collection site person shall sign and enter the date the specimens were sealed in the container for shipment. The collection site person shall ensure that the chain of custody form is attached to each container sealed for shipment to the drug-testing laboratory.

Breath Specimen Collection Procedures

Upon arrival at the alcohol collection site, the employee must provide positive identification (acceptable photo ID) to the clinic/BAT. The employee is subject to discipline, up to and including dismissal for failure to have appropriate identification available. After the testing procedures have been explained to the employee, the employee and the BAT must complete, date and sign the alcohol testing form. If the employee refuses to sign the form, the BAT will note the refusal in the remarks section and it will be considered a refusal to test. The company may not modify or revise this form unless the form is directly generated by an EBT (i.e., the space for affixing a separate printed result is omitted). The form must contain triplicate (or three consecutive identical) copies. One copy shall be retained by the BAT; one copy shall be retained by the employee; and one copy shall be transmitted to the company.

The BAT shall open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained. Following the initial test, the BAT must inform the employee of the result displayed on the EBT or the printed result.

If the result of the initial test is an alcohol concentration of less than 0.02, no further testing is required and the test shall be reported to the company as a negative test.

If the result of the initial test indicates an alcohol concentration of 0.02 or greater, a confirmation test shall be performed. The confirmation test must be conducted at least fifteen minutes, but not more than thirty minutes, after completion of the initial test. Section 40.251 (e) states: "Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in Section 40.253, not another screening test." This delay prevents an accumulation of alcohol in the mouth from leading to an artificially high reading. The BAT shall inform the employee of the need to conduct a confirmation test. The employee shall be instructed not to eat, drink or put any object or substance in his/her mouth during the waiting period. The BAT shall also instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT shall inform the employee that the test shall be conducted at the end of the waiting period, even if the employee has disregarded the instructions.

The confirmation test shall be conducted using the same procedure as the initial test after an airblank test conducted on the EBT results in a reading of 00.0 before proceeding with the confirmation test. A new mouthpiece shall be used.

If the initial and confirmatory test results are not identical, the confirmation test result shall be deemed to be the final result.

The BAT shall sign and date the form. The employee shall sign and date the certification statement, which includes notice that the employee cannot perform safety-sensitive duties or operate a motor vehicle if the results are 0.02 or greater. The BAT shall attach the alcohol test result printout directly onto the alcohol collection form with tamper proof tape (unless the results are printed directly on the form). The results will be reported to the City of Surprise Human Resources Department.

If the result displayed on the EBT is not the same as that on the printed form, the test shall be cancelled and deemed null and void, and the EBT shall be removed from service.

If an employee attempts and fails to provide an adequate amount of breath, the BAT shall note this on the form and immediately inform the City of Surprise Human Resources Department. The employee will then be transported to and evaluated by a company physician as soon as possible, concerning the employee's medical ability to provide an adequate amount of breath.

If the evaluation indicates that there was a valid medical reason for the inadequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be considered a refusal. If no valid medical reason is determined, the inadequate amount of breath shall be considered a refusal to take the test; the employee will be suspended and will receive disciplinary action up to and including termination and referral to a SAP.

An employee with an alcohol concentration of 0.02 or greater will be immediately suspended from duty and will receive disciplinary action up to and including termination and referral to a SAP.

Circumstances Requiring Direct Observation:

The City, the employee and the collection site personnel shall take appropriate precautions to preserve the integrity and identity of the specimen by insuring that it is not adulterated or diluted during the collection procedure, and that the specimen tested is that of the person from whom it was collected.

In the event there is reason to believe that an employee has altered or substituted the urine specimen, a second urine specimen shall be obtained as soon as possible under direct supervision of the same gender collection site person, under the following circumstances:

- (a) The employee presents a urine specimen that falls outside the normal temperature range (90.0 to 100.0 F).
- (b) The last urine specimen provided by the employee (e.g., on a previous occasion) was determined by the laboratory as unable to test (for reasons other than chain of custody), or is considered "adulterated" (altered) by the laboratory.

Positive re-tests will result in immediate suspension and removal from safety-sensitive duties, pending disciplinary action up to and including termination and referral to a SAP.

If the collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen (such as substituted urine, blue dye in specimen presented, etc.), he/she will immediately call for an observed collection and notify the City of Surprise Human Resources department. The employee will be suspended without pay pending the test results and be subject to a disciplinary action up to and including termination and referred to a SAP.

Laboratory Analysis

The contracted Department of Health & Human Services (HHS) certified labs meet DOT requirements and qualifications and are consistent with 49 CFR Part 40. The labs will also comply with Health & Human Services guidelines concerning accessioning and processing specimens.

All urine specimens will be analyzed for the following controlled substances (Drug Testing Panel):

- Marijuana
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

The initial and confirmatory cut-off levels (thresholds) for the initial screen and the confirmatory test are in accordance with DOT Regulations. (See 49 CFR Part 40.)

If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

In addition to testing specimens for drugs of abuse, laboratories will test specimens to determine if adulteration, dilution, or substitution has occurred (validity testing). Laboratories will conduct tests for specific gravity, creatinine concentration, nitrite

concentration, and a host of other determinants of adulteration, substitution, and/or dilution. The laboratory will apply the criteria in current HHS requirements or specimen validity guidance in accordance with 49 CFR Part 40.

Dilute Negative Policy:

Section 40.197(b) through (e) states: “(b) If the MRO informs you that a negative drug test was dilute, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see Sections 40.67(b) and (c). (c) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish, different policies for different types of tests (e.g., conduct retests in pre-employment test situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters. (d) If you direct the employee to take another test, you must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site. If you direct the employee to take another test, the result of the second test—not that of the original test—becomes the test of record, on which you rely for purposes of this part.”

The City of Surprise policy on dilute negative drug test results is to retest immediately upon notification of a dilute negative drug test result for a pre-employment, post accident, reasonable suspicion, random, follow-up and return to duty testing.

Laboratory Reporting Procedures

Drugs:

Laboratories are required to report the results for each primary specimen tested as one or more of the following:

- (1) Negative;
- (2) Negative-dilute, with numerical values for creatinine and specific gravity;
- (3) Rejected for testing, with remark(s);
- (4) Positive, with drug(s)/metabolite(s) noted;
- (5) Positive, with drug(s)/metabolite(s) noted-dilute;
- (6) Adulterated, with numerical values (when applicable), with remark(s);
- (7) Substituted, with numerical values for creatinine and specific gravity; or

(8) Invalid result, with remark(s).

All results will be reported directly to an MRO in accordance with Title 49, Part 40.97(b). The laboratory shall report all drug test results to the City-contracted Medical Review Officer (MRO) within the same day or business day after review by the certifying scientist is complete. Electronic transfer is acceptable.

The City of Surprise utilizes the services of contracted, Department of Health and Human Services (HHS) certified laboratories to provide urine analysis services. A urine specimen of a covered employee will be sent from the contracted testing facility to the contracted HHS certified laboratory for analysis. A confirmatory GC/MS test will be conducted on all positive test specimens.

The laboratory shall report as negative, all drug specimens (referred to as samples), which are negative on the initial test or negative on the confirmatory test. Only samples confirmed positive after the confirmatory GC/MS test will be reported positive for a specific drug.

Specimen (sample) Retention:

Following positive, adulterated, substituted, or invalid test results from the initial immunoassay test and a positive/supportive screen from the GC/MS test, samples are placed in a locked forensic freezer at the testing laboratory and maintained for one year. Within the one-year period, the MRO, employee, the City, or a DOT agency may request in writing that the laboratory retain the specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If an extension is not requested, the laboratory may discard the specimen at the end of the year period. If the split is not tested, then the split is retained for the same period of time as the primary specimen and under the same storage conditions. If the split is tested, the laboratory testing the split will meet the same requirements for storage.

All records supporting test results will be kept by the lab for two years unless an extension is requested. If there is no extension, the lab will discard the records after the two year period has elapsed.

Alcohol:

The employee and the individual conducting the breath test (a breath alcohol technician or BAT) complete the alcohol testing form to ensure proper recording of the results.

The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results.

Test results of less than 0.02 percent shall be reported as negative.

Test results for alcohol are immediately known at the time of testing. The City of Surprise Human Resources Department or designee will be immediately contacted by the contracted testing facility as soon as a confirmed positive alcohol test result has occurred. A copy of the alcohol test results, both initial and if necessary, confirmatory, will be given to the employee at the conclusion of the test.

Medical Review Officer (MRO)

All drug test results shall be reported by the laboratory directly to the MRO. The MRO is a licensed physician, with knowledge of substance abuse disorders. The MRO shall review and interpret all drug test results received from the laboratory and may also request quantification of the drug test results from the laboratory. The MRO shall also review the chain of custody to ensure that it is sufficient and complete.

The only specimens reported as positive shall be those which have been confirmed as positive through gas chromatography/mass spectrometry (confirmatory test). The laboratory shall report the test results to the City's MRO within five working days after the receipt of the specimen and shall also forward the original urine control form to the MRO. The laboratory shall ensure that all data transmissions are confidential and shall secure and limit access to its data transmission storage and retrieval system.

The MRO shall contact the employee directly, on a confidential basis, to determine whether the employee wishes to discuss the drug test results. A staff person under the MRO's supervision may make the initial contact and a medically licensed or certified staff person may gather information from the employee. Except as provided below, the MRO shall talk directly with the employee before verifying a drug test as positive.

After investigating the positive test (See MRO), the MRO will inform the employee of the 72-hour split specimen testing opportunity, if applicable. The City of Surprise will pay for the cost of the split specimen testing.

In order to assure that employees are not being harmed by false positive test results, the MRO shall explore possible alternative explanations for any positive drug test result. Prior to making a final decision to verify a positive drug test result, to the extent possible, the MRO shall conduct a medical interview with the employee, whether in person or by phone, and give the employee the opportunity to discuss the positive drug test results. If the confirmed positive drug test result could have resulted from a legally prescribed medication, the MRO shall review all medical records made available by the tested employee.

If, after making and documenting all reasonable efforts to contact the employee, the MRO is unable to reach the employee directly, the MRO shall contact the City of Surprise Human Resources Department, who shall direct the employee to contact the MRO prior to going on duty.

If, after making all reasonable efforts, the company is unable to contact the employee, the employee shall be placed on an unpaid, temporary leave of absence pending the drug screen results.

The MRO shall then report the positive result to the City of Surprise Human Resources Department, and identify the substance.

Section 40.133 (a)(2) states: "The MRO may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact you [MRO] and more than 72 hours have passed since the time the DER contacted the employee."

Section 40.133 (a)(3) states: "You [the MRO] may verify a test result as a positive or refusal to test, as applicable, if neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory."

If the MRO determines that there is a legitimate medical explanation for a positive drug test result, the result shall be reported to the company as negative.

The City-contracted Medical Review Officer (MRO) shall forward all verified negative test results to the Human Resource Department within two business days of receipt from the laboratory.

Split Specimen Testing:

When the MRO notifies an employee of a verified test, the employee may request a retest of the split specimen within 72 hours after talking to the MRO. The MRO directs the employee to an automated voice messaging system and provides the employee with the telephone number of that messaging system. The employee requests the split sample test and the employee's voice, time and date are recorded and documented. The MRO then notifies the laboratory in writing that the split sample, along with appropriate paperwork should be sent to another HHS-approved laboratory for testing. The cost of the retest will be at the employee's expense, including shipment to another HHS-approved laboratory.

The City will not stop any administrative processes pending the results of the split specimen. For example, if this positive test result is the employee's first positive drug and/or alcohol test result(s), the City would proceed with processing the employee into a rehabilitation program and any applicable disciplinary action required.

If the analysis of the split specimen fails to confirm the presence of the drug(s) found in the primary specimen, or if the split specimen is unavailable or inadequate for testing, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, company and employee.

Substance Abuse Professional (SAP):

The City has available the contracted services of a designated Substance Abuse Professional (SAP), who meets the requirements and qualifications of the DOT regulations, consistent with 49 CFR Part 40.

The Substance Abuse Professional (SAP) will:

1. Determine whether a covered employee who has refused to submit to a drug and/or alcohol test is in need of assistance in resolving problems associated with prohibited substance use.
2. Determine whether a covered employee who has a verified positive drug and/or alcohol test is in need of assistance in resolving problems associated with prohibited substance use.
3. Determine the appropriate assistance and level of assistance for the employee.
4. Receive reports from treatment program professionals to monitor the employee's compliance with the rehabilitation program.
5. Conduct a Return-To-Duty evaluation to determine whether a covered employee has followed the rehabilitation program and the SAP's recommendations.
6. Determine the frequency and duration of follow up testing for a covered employee. The City of Surprise requires a minimum of 24 months follow up testing.
7. Notify the City's Human Resource Department or designee and provide a copy of the employee's written follow up testing plan.

The City's process of utilizing the SAP is not applicable to external City applicants.

An original probationary, part time, or temporary covered employee who has a positive test result will be terminated from City employment. Information on the services of a Substance Abuse Professional will be given to the terminated employee.

An applicant who has a positive test result will be given information on the services of a Substance Abuse Professional.

Test Results and Records

The City of Surprise Human Resource Department or designee shall maintain records pertaining to alcohol misuse and controlled substances use prevention programs in a secure location with controlled access.

Confidentiality:

Except as required by law or expressly authorized or required in DOT Regulations (49 CFR Part 40) covered employee test information will not be released. All standards of confidentiality will be adhered to. A covered employee's testing records and results will be released only to those authorized by DOT rules to receive such information.

This includes:

1. The employee, if they request it in writing. Upon written request, employees may request any records pertaining to the covered employee's use of alcohol and/or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. The written request will be submitted to the Human Resource Department.
2. FTA, DOT, or NTSB when investigating an accident.
3. Decision-maker in a lawsuit, grievance, or other proceeding initiated on behalf of the employee. The request is processed through the City of Surprise's Legal Department.
4. Subsequent employers, if requested in writing by the employer.
5. Other identified means, if requested in writing by the employee.
6. City of Phoenix, Public Transit Compliance Officer

Management Information Systems (MIS) Reports:

The Human Resource Department or designee shall prepare and maintain a DOT Drug and Alcohol Testing Management Information System (MIS) data collection form. The annual summary shall be completed in accordance with DOT Regulations by March 15th of each calendar year, covering the previous calendar year.

Training

Employee training will comply with FTA regulations, as detailed in Sections 655.14(b) 1 and (b) 2 state that:

(b) Training.

(1) Covered employees: Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) Supervisors. Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probably drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Refresher training of sixty minutes Drug and Alcohol Awareness is recommended each year.

Definitions

Accident (FTA) - An occurrence associated with the operation of a vehicle, if as a result:

- An individual dies,
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident,
- With respect to an occurrence, one or more vehicles incur disabling damage and is/are transported away from the scene by a tow truck or other vehicle;
- With respect to an occurrence, a mass transit vehicle is removed from revenue service.

Administrative Leave – A covered employee who has a positive alcohol and or drug test result will be placed on Administrative Leave pending an administrative investigation and disposition of their employment status. The employee will provide a phone number that they can be reached at so that they can be contacted by phone during normal business hours. The employee is to remain available for contact and to be ready to present themselves at a designated City location when asked to do so by supervision or management. If necessary, the employee's work hours may be changed (i.e., 8:00 a.m. – 5:00 p.m.) for administrative convenience.

Adulterated specimen - A specimen that contains a substance not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine. The intent is to mask or destroy the drug or drug metabolite that the specimen may contain.

Alcohol – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration (or content) - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Test.

Alcohol Use – The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

At Fault – Means “an actionable breach of a legal duty, act or omission proximately causing or contributing to injury or damages sustained by a person, including negligence in all its degrees, contributory negligence, assumption of risk, strict liability,” and intentional torts, A.R.S. § 12-2506(F)(2) and any Arizona cases interpreting this phrase.

Blind Sample or Blind Performance Test Specimen – A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

Breath Alcohol Technician (BAT) – A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device (EBT).

Cancelled Test - A drug test or alcohol test that has a problem identified that cannot be or has not been corrected, or as 49 CFR Part 40 requires it to be cancelled. A canceled test is neither a positive nor a negative test.

Chain of Custody – The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Collection Container – A container in which the employee urinates to provide the specimen for a drug test.

Collection Site – A place selected by the City of Surprise where employees present themselves for the purpose of providing a urine and/or breath specimens to be used in laboratory analysis and/or alcohol testing.

Collector (or staff) – A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by employees and who initiates and completes the CCF.

Confirmatory Test - In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test follows a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. The second test further supports a validity test result.

Controlled Substances –Those substances identified in the DOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs 49 CFR Part 40.85.

DOT – The United States Department of Transportation that administers regulations related to drug and alcohol testing. This term encompasses all DOT agencies, including, but not limited to, the Federal Transit Administration.

Dilute – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage – Damage, which precludes departure of a motor vehicle from the scene of an accident in its usual manner.

Driver – Any person who operates a commercial motor vehicle. This includes, but

is not limited to: Full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Drug-Free Workplace Programs – In accordance with the Drug-Free Workplace Programs Act of 1986, the City of Surprise has implemented training and testing programs that meet FTA Regulations.

Drugs – The drugs for which tests are required under 49 CFR Part 40 and other DOT regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Employee – For the purpose of drug and/or alcohol testing, employee shall mean regular, temporary, full-time, part-time, contract, volunteer workers, and applicants for employment. Employee, Covered Employee, Driver and Individual all have the same meaning for the purposes of this policy.

Employee Assistance Program (EAP) – A program provided through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems.

Evidential Breath Testing Device (EBT) – A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Products List for "Evidential Breath Measurement Devices" (CPL).

FMCSA – The Federal Motor Carrier Safety Administration, an agency of the U.S. Department of Transportation.

FTA – The Federal Transit Administration, an agency of the U.S. Department of Transportation.

HHS – The Department of Health & Human Services.

Initial Drug Test - The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Validity Test - The first test used to determine if a specimen is adulterated, diluted, or substituted.

Invalid Test – The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Laboratory – Any U.S. laboratory certified by HHS under the National Laboratory

Certification Program as meeting the minimum standards of the HHS Guidelines.

Laboratory Positive – When the Medical Review Officer (MRO) is unable to contact the employee after receiving a confirmed positive test from the laboratory.

Medical Review Officer (MRO) – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Performing (a Safety-Sensitive Function) – An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Primary Specimen – In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

Prohibited Drug – Marijuana, Cocaine, Opiate, Amphetamine, or Phencyclidine.

Reasonable Suspicion - For purposes of this program, reasonable suspicion is based upon specific, objective, and articulated facts and any rational inferences from those facts that would lead a reasonable person to suspect an individual has used drugs or alcohol.

Refusal To Submit – An employee fails to submit to a test after he/she has received notice of the requirement to be tested or; refuses to take a drug and/or alcohol test (verbal refusal or physical absence; failure to provide adequate breath or sufficient quantities of urine to allow appropriate testing; or engaging in conduct that clearly obstructs the testing process, including tampering with or attempting to adulterate the specimen or interfere with the collection procedure; failure to report immediately to the designated testing facility upon notification of the requirement to be tested; any accident before a test is administered or fails to remain readily available for testing; failure to sign any requested forms; or failure to submit to testing at a hospital following an accident.

Safety-Sensitive Function – Any of the following duties or functions performed during "On-duty time." On-duty time means all time from the time an employee/driver begins to work or is required to be in readiness to work, until the time they are relieved from duty by the supervisor. Operating a revenue service vehicle, including when not in revenue service; Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; Controlling dispatch or movement of a revenue service vehicle; Maintaining a revenue service vehicle or equipment used in revenue service, unless such services are contracted out; Carrying a firearm for security purposes; All time at a plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; All time inspecting equipment, or

otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; All time spent at the driving controls of a commercial motor vehicle in operation; All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth; All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, Attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening Test (or Initial Test) – In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Self-Identification – The process whereby an employee notifies their supervisor that they have a problem with an illegal controlled substance or alcohol and wish to participate in a rehabilitation program. This notification must take place before the employee is notified of the requirement to take a test.

Self-Referral – The process whereby an employee can voluntarily seek confidential external assistance to deal with an illegal controlled substance or alcohol abuse problem.

Shipping Container – A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

Split Specimen – In drug testing, a part of the urine specimen that is sent to the first laboratory and retained unopened, and is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result. The employee must request the testing of the split specimen within 72 hours of notification by the MRO of a positive test.

Substance Abuse Professional (SAP) – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow up testing and aftercare.

Substituted Specimen – A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Validity Testing – Testing that laboratories conduct to deter and detect tampering with tests (i.e., adulterating or substituting a test).

Vehicle – For the purpose of this policy, a vehicle is defined as a piece of equipment weighing in excess of 26,001 or more pounds gross vehicle weight rating, or a vehicle designed by the manufacturer to carry 16 or more passengers including the driver, or a vehicle carrying a placard required amount of hazardous material, or a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

Verified Negative (drug test result) – A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

Verified Positive (alcohol) – A confirmed breath test with 0.02 percent or greater concentration of alcohol.

Verified Positive (drug test result) – A drug test result reviewed by a Medical Review Officer who has interviewed the donor and has determined to have evidence of prohibited drug use, or if an employee refuses to submit to an alcohol and/or drug test.